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Attorneys for the Defendants:  
INTERNATIONAL COLLECTION CORPORATION, CHARLES D.  
HENDRICKSON

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

HERMINIA LORENZO CRUZ

| Case No: C08 00991 JF(rx)

Plaintiff,

NOTICE OF MOTION; MOTION  
TO DISMISS THE COMPLAINT  
COMPLAINT

vs.

INTERNATIONAL COLLECTION  
CORPORATION, a California corporation,  
CHARLES D. HENDRICKSON,  
individually and in his official capacity,

(F.R.C.P RULE 12)

## Defendants.

DATE: May 2, 2008  
TIME: 9:00 a.m.  
COURTROOM: 3  
(reserved)

1 To all parties and their attorneys of record:  
2

3 Please take notice on May 2, 2008, at the hour of 9:00 a.m. or as soon  
4 there after as counsel may be heard in Courtroom 3 of the above-entitled Court  
5 located at 280 S. 1<sup>st</sup> Street, San Jose, California 95113, the Defendants,  
6 INTERNATIONAL COLLECTION CORPORATION "ICC", and CHARLES D.  
7 HENDRICKSON "Hendrickson", will move this Court to Dismiss the Complaint  
8 in this action.

9 This Motion will be made upon its papers and filings, the Memorandum of  
10 Points and Authorities as well as such oral argument that may occur at the  
11 hearing in this action should this Court invite oral argument.  
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13  
14 Respectfully submitted,  
15  
16

17 LARRY ROTHMAN & ASSOCIATES  
18

Dated: March 28, 2008

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20  
21 LARRY ROTHMAN,  
22 Attorney for Defendants:  
23 INTERNATIONAL COLLECTION CORPORATION, CHARLES D.  
24 HENDRICKSON  
25  
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**PROOF OF SERVICE**

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: 1 City Boulevard West, Suite 850, Orange, California 92868

On March 28, 2008, I served the foregoing document described as:

NOTICE OF MOTION; MOTION TO DISMISS THE COMPLAINT  
on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

Fred W. Schwinn, Esq.  
Consumer Law Center, Inc.  
12 South First Street, Suite 1014  
San Jose, California 95113-2418

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on March 28, 2008, at Orange, California, California.

WADE KRAUS  
WADE KRAUS

LARRY ROTHMAN & ASSOCIATES  
LARRY ROTHMAN – State Bar No. 72451  
City Plaza  
1 City Boulevard West, Suite 850  
Orange, California 92868  
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Attorneys for the Defendants:  
INTERNATIONAL COLLECTION CORPORATION, CHARLES D.  
HENDRICKSON

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

HERMINIA LORENZO CRUZ

Plaintiff.

vs.

INTERNATIONAL COLLECTION  
CORPORATION, a California corporation,  
CHARLES D. HENDRICKSON,  
individually and in his official capacity,

## Defendants.

| Case No: C08 00991 JF(rx)

**MEMORANDUM OF  
POINTS AND AUTHORITIES  
IN SUPPORT OF THE MOTION  
TO DISMISS THE COMPLAINT**

DATE: May 2, 2008  
TIME: 9:00 a.m.  
COURTROOM: 3  
(reserved)

The Defendants submit the following Memorandum of Points and Authorities in support of their Motion to Dismiss the Complaint.

## **STATEMENT OF FACTS**

This action was brought under the Fair Debt Collection Act, 15 USC, 1692 et seq. the “Act”

It is hard to ascertain what constituted the alleged violations since the pleading is general and conclusionary in nature. In addition, almost all of the alleged violations were barred by the Statute of Limitations.

The “underlying” claim by the Defendants to the Plaintiff was a series of Collection letters due to the Plaintiff’s checks being returned for non-sufficient funds.

Important dates for this Court to note are February 19, 2008, which is when this lawsuit was filed and February 20, 2008, on which date any preceding violations are barred by the one year statute of limitations as set forth in this brief.

The Defendants Parties in this action are identified as follows:

INTERNATIONAL COLLECTION CORPORATION “ICC”, which is the collection agency which filed the State Court law suit against the Plaintiff to recover the funds borrowed.

CHARLES D. HENDRICKSON "Hendrickson" an officer of ICC.

which this Federal Court Action is based.

There is also a lack of any alleged cause of action against Hendrickson personally who is merely an officer of ICC.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

I

## **WHEN A MOTION TO DISMISS A COMPLAINT CAN BE FILED**

According to Federal Rules of Civil Procedure, Rule 12 b

### Rule 12.

(b) .... Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

•

1 (6) failure to state a claim upon which relief can be granted;

2  
3  
4 A dismissal for failure to state claim on which relief can be granted is proper  
5 if it appears beyond doubt that plaintiff can prove no set of facts in support of  
6 claim that would entitle him to relief, if complaint fails to allege an element  
7 necessary for relief, or if affirmative defense or other bar to relief is apparent from  
8 face of complaint. See Theuerkauf v. United Vaccines Div. of Harlan Sprague  
9  
10 Dawley, Inc., W.D.Mich.1993, 821 F.Supp. 1238.

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14 **II**

15 **THE STATUTE OF LIMITATIONS BARS**

16 **CERTAIN CLAIMS IN THE COMPLAINT**

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20 The Motion to Dismiss should be granted as to both defendants on whom  
21 the statute of limitations has passed. According to 15 USC Section 1692k(d), an  
22 action to enforce any liability created by this subchapter may be brought...within  
23 one year from the date on which the violation occurs. Paragraphs 14, 15, 16, 17,  
24 18,19, 20, 21, 22, 23,24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40,  
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28 41, 42, 43, 44, 45, 46, 47, 48, 29, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,

1 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 all contain allegations that  
2 are barred by the Statute of Limitation as they allege acts that are over one (1) year  
3 old.  
4

5 As all of the causes of action include facts barred by the statute of  
6 limitations, the aforementioned Paragraphs should be stricken and the Motion to  
7 Dismiss each cause of action should be granted.  
8  
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11 **III**

12 **IT IS UNCLEAR FROM THE REMAINING ALLEGATIONS THAT ARE**  
13 **NOT BARRED BY THE STATUE OF LIMITATIONS OF THE SPECIFIC**  
14  
15 **ACTS THAT CONSTITUTE THE VIOLATIONS**  
16  
17

18 A motion to dismiss is the proper method for testing the legal sufficiency of  
19 a complaint. Sioux City Community School Dist. v. International Tel. & Tel.  
20 Corp., N.D.Iowa 1978, 461 F.Supp. 662 See, also, Mason City Center Associates  
21 v. City of Mason City, Iowa, D.C.Iowa 1979, 468 F.Supp. 737. Motion to dismiss  
22 for failure of pleadings to state claim upon which relief can be granted is usual  
23 method for testing legal sufficiency of complaint. CBS Inc. v. Springboard Intern.  
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1                   Records, S.D.N.Y.1976, 429 F.Supp. 563, 199 U.S.P.Q. 422.

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3  
4                   In paragraph 102( b), Plaintiff claims that Defendants misrepresented the  
5 character, amount or legal status of the debt, in violation of 15 USC Section  
6 1692e(2)(A). There are no facts in the complaint that allege specific facts  
7 supporting this allegation.  
8  
9

10  
11                  In Paragraph 102(d), Plaintiff alleges that Defendants attempted or  
12 threatened to collect treble damages from Plaintiff pursuant to California Civil  
13 Code Section 1719, an action that cannot legally be taken or that was not intended  
14 to be taken, in violation of 15 USC Section 1692 e(5).  
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18                  The action before this Court was based upon Plaintiff's NSF check.  
19 California Civil Code Section 1719 does allow treble damages. As such, it is  
20 unclear what specific facts of how Defendants violated 15 USC Section 1692  
21 e(5).  
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IV

**ALL CLAIMS AGAINST HENDRICKSON SHOULD BE DISMISSED**

Hendrickson is merely an officer of ICC. There are no facts set both in the Complaint that would hold him personally liable for any wrongful acts. See F.R.C.P. Rule 12 b 5.

## CONCLUSION

As such, the Complaint should be dismissed..

Respectfully submitted,

LARRY ROTHMAN & ASSOCIATES

Dated: March 28, 2008

LARRY ROTHMAN,  
Attorney for Defendants:  
INTERNATIONAL COLLECTION CORPORATION, CHARLES D.  
HENDRICKSON,

**PROOF OF SERVICE**

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: 1 City Boulevard West, Suite 850, Orange, California 92868

On March 28, 2008, I served the foregoing document described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION TO DISMISS THE COMPLAINT on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

Fred W. Schwinn, Esq.  
Consumer Law Center, Inc.  
12 South First Street, Suite 1014  
San Jose, California 95113-2418

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I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on March 28, 2008, at Orange, California, California.

WADE KRAUS  
WADE KRAUS

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2 LARRY ROTHMAN – State Bar No. 72451  
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15 HENDRICKSON

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

HERMINIA LORENZO CRUZ

Case No: C08 00991 JF(rx)

Plaintiff,

ORDER  
(proposed)

vs.

(F.R. C.P. RULE 12)

INTERNATIONAL COLLECTION  
CORPORATION, a California corporation,  
CHARLES D. HENDRICKSON,  
individually and in his official capacity,

DATE: May 2, 2008

Defendants.

TIME: 9:00 a.m.

COURTROOM: 3

(reserved)

This matter came regularly for hearing on Defendants' Motion to Dismiss Under Rule 12 of the Federal Rules of Civil Procedure at 9:00 a.m. on May 2, 2008. The Plaintiff and opposing party , HERMINIA LORENZO CRUZ, on behalf of himself and all others similarly situated, appeared by FRED W. SCHWINN, ESQ. of the Consumer Law Center. The Defendants and Movants, INTERNATIONAL COLLECTION CORPORATION and CHARLES D. HENDRICKSON appeared by LARRY ROTHMAN, ESQ. of LARRY ROTHMAN & ASSOCIATES.

The Court read and considered all papers and filings for this Motion and heard arguments of counsel.

This Court grants the Motion to Dismiss the Complaint.

DATED:

**UNITED STATES DISTRICT COURT JUDGE**

**PROOF OF SERVICE**

State of California, County of Orange:

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ORDER on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

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